SUPREME COURT, U. S.

FILED
OCT 10 1961
JAMES R. BROWNING, CLERK

No. [redacted]

In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1961

HAROLD BECK KESLER,

Appellant

—vs.—

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

AN APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BRIEF OF APPELLEE

WALTER L. BUDGE
Attorney General
GORDON A. MADSEN
Assistant Attorney General
Attorneys for Appellee
State Capitol
Salt Lake City, Utah

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Statement	2
Argument	3
(a) Proper exercise of state police power.	5
(b) Presumption and standards of constitutionality.	12
(c) Creditor benefits are incidental.	13
(d) To permit appellant the relief sought would frustrate the purpose of the act through the simple expediency of voluntary bankruptcy.	18
Conclusion	19

Cases Cited

Bibb v. Navajo Freight Lines, 359 U.S. 520	12
DeVries v. Alger, Secretary of State, 329 Mich. 68, 44 N. W. 2d 872 (1950)	8
Grosso v. Hultz, 193 N.Y.S. 2d 544 (1959)	7
Moorehead v. Mississippi Safety-Responsibility Bureau, 232 Misc. 422, 99 So. (1958)	7
Ohlson v. Mealey, 179 Misc. 13, 37 N.Y.S. 2d 123	7
Reitz v. Mealey, 314 U.S. 33 (1941)	6. 8, 9, 18
Texas Dept. of Public Safety v. Jackson, 272 S.W. 2d 577	7

Constitution And Statutes Cited

Constitution of United States, Article I, Sec. 8	2
11 U.S.C. 35, Bankruptcy Act, Sec 17	2, 4

INDEX (Continued)

	Page
28 U.S.C. 2281	3
28 U.S.C. 2284	3
New York Laws	
62A McKinney's Consolidated Laws of New York, Annotated, Sec. 336, page 136	6
Utah Code Annotated 1953	
41-12-13	2, 3, 4, 5, 9, 15, 17
41-12-14	2, 3, 4, 13
41-12-15	2, 3, 4, 8, 9
41-12-16	14
41-12-17	2, 14
MISCELLANEOUS	
115 A.L.R. 1376	6
35 A.L.R. 2d 1015 through 1020	6
Uniform Vehicle Code, published by National Committee on Uniform State Laws and Ordinances	5

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 539

HAROLD BECK KESLER,

Appellant

—vs.—

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

AN APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BRIEF OF APPELLEE

OPINION BELOW

The opinion of the three-judge United States District Court for the District of Utah (R. 11 through 23) is reported at 187 Federal Supplement 277.

JURISDICTION

The judgment of the three-judge United States District Court for the District of Utah was entered on August 30, 1960, denying relief to a bankrupt petitioner seeking an injunction against the enforcement of the Utah Safety

Responsibility Act, alleged to be unconstitutional on the ground that it conflicts with the Bankruptcy Act (R. 23). The petitioner filed a Notice of Appeal on September 28, 1960 (R. 24). Probable Jurisdiction was noted January 16, 1961 (R. 25).

QUESTION PRESENTED

1. Whether Sections 41-12-13, 41-12-14, 41-12-15 and 41-12-17, Utah Code Annotated, 1953, Volume 5, are unconstitutional because they conflict with Section 17 of the Bankruptcy Act, 11 U.S.C.A. 35 and its constitutional implementation, Article I, Section 8, Clause 4, of the United States Constitution.

STATEMENT

The facts giving rise to this case are stipulated (R. 9-11). Following judgments rendered June 21, 1957, against appellant for negligent operation of a motor vehicle, resulting in an accident causing personal injuries (R. 9), appellee, pursuant to Section 41-12-13, U.C.A. 1953 (R. 6), upon motion of counsel for the judgment creditors, revoked the driver's license of appellant (R. 9). Subsequent to the suspension of the driver's license, appellant filed a petition in bankruptcy in which he scheduled the above mentioned judgments (R. 9). Also, two additional items were scheduled. One was the claim of appellant's attorney for fees arising out of the negligence action, and the other, a claim of a finance company for $502.25 (R. 10). Appellant received a discharge December 31, 1959 (R. 9).

Following his discharge, appellant made written demand upon appellee for reinstatement of his driver's license on the ground that the judgment upon which the suspension was based had been discharged in bankruptcy (R. 10). The request was refused by appellee. In its refusal,

appellee cited Section 41-12-15, U.C.A. 1953, which provides in part:

> "A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act." (R. 10)

On March 17, 1960, appellant initiated the action below by petition under the provisions of Title 28, U.S.C.A., Sections 2281 and 2284 (R. 1-3). At the hearing of the matter, appellee conceded that the specially-convened court had jurisdiction over the matter in issue and was empowered to determine the constitutionality of the state act (R. 14). Appellant's petition was denied unanimously by the three-judge court (R. 23).

ARGUMENT

While appellant below and herein attacks the constitutionality of several sections of the Utah Financial Responsibility Act, the court below ruled that only the provisions of Sections 41-12-13, 41-12-14(a) and 41-12-15 are properly before the court, since the other provisions were not invoked and a "justiciable controversy" had not arisen therefrom. The lower court said in part:

> "With respect to the amendment [41-12-17] giving the creditor control over the restoration of the operator's privileges prior to satisfaction of the judgment in full, we believe that we are bound by the Supreme Court's view that a justiciable question would arise only if the creditor were shown to have invoked the provision by consenting to the renewal. How this question ever would be raised, with the creditor not likely to do so if he has consented to the restoration and the debtor not willing to, is not clear to us as a practical matter, but we

must follow the higher court in thus straining to avoid the constitutional issue." (R. 17-18)

Since the bulk of appellant's brief before this court concerns itself with the provisions of Sections 41-12-13, 41-12-14(a) and 41-12-15, appellee concludes that he has abandoned any attack on the constitutionality of the remaining provisions of the Utah act cited.

The pertinent portion of the Bankruptcy Act is as follows:

> "(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except * * *." (Exceptions not applicable.)

The contested language of the Utah act is as follows:

41-12-13.

> "Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commission immediately after the expiration of said 60 days, a certified copy of such judgment. . . ."

41-12-14.

> "(a) The commission, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except . . . ." (Exceptions not in issue.)

41-12-15.

> * * *
>
> "A discharge in bankruptcy following the rendering of any such judgment shall not relieve the

judgment debtor from any of the requirements of this act."

Appellee contends that the Utah statute is constitutional for the reasons that (a) it is a constitutional and proper exercise of the state's police power; (b) it is entitled to a presumption of constitutionality and meets the standards of constitutionality imposed by this court upon such statutes; appellee further contends (c) that the "creditor control" provisions of the Utah act are incidental rather than primary, and have the effect of softening the otherwise harsh effects of the act if revocation were automatic; and finally (d) that to permit appellant the relief sought would nullify the effects and purposes of the state statute through the simple expediency of a voluntary bankruptcy.

(a) Proper exercise of state police power.

Every state of the union has some form of a Financial Responsibility Act. Many of such statutes have been modeled after the "Uniform Vehicle Code," published by the National Committee on Uniform Traffic Laws and Ordinances. With the exceptions of Tennessee and Vermont, all of the states require revocation of a driver's license upon failure to satisfy a judgment arising from personal injuries received from a negligence accident. Twenty-one states[1] and the District of Columbia have a provision similar to Section 41-12-13, Utah Code Annotated 1953, in issue here. The model provision is found at Section 7-306 of the Uniform Vehicle Code. The section in

[1]Alabama, Arkansas, Florida, Georgia, Hawaii, Kansas, Louisiana, Maryland, Mississippi, Montana, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas and Utah.

question provides that the judgment giving rise to revocation of the license shall be forwarded to the state licensing agency upon the judgment creditor's, or his attorney's, request. The remaining jurisdictions, with varying modifications, require that the judgments be certified from the court to the state agency automatically.

It is interesting to note, incidentally, that contrary to the assertion of appellant, at page 12 of his brief, the creditor request provision remains a part of the New York Financial Responsibility Act. While appellant is correct in asserting that the original provision was repealed in 1941, the repeal was a process of reenacting and recataloguing the state's Financial Responsibility Act. It now appears as § 336, 62A, McKinney's Consolidated Laws of New York, Annotated, at page 136.

Financial Responsibility Acts similar to the Utah statute now before the court have been repeatedly assailed as unconstitutional in a number of jurisdictions[1] on three major grounds—(1) violation of the due process clause, (2) in conflict with equal protection clause, (3) in derogation of the Bankruptcy Act. The cases from these jurisdictions are collected in an annotation at 35 A.L.R. 2d 1015 through 1020. See also 115 A.L.R. 1376.

As noted by appellant, this court, in *Reitz v. Mealey*, 314 U.S. 33, (1941), upheld the former New York act. References to this case will be made later in this brief. In each state where the constitutionality of its Financial Responsibility Act has been questioned, the act has universally been upheld as a valid and constitutional exercise of the state's police power. The majority of the holdings adopt the view

[1]Arizona, California, New York, Ohio, Tennessee, West Virginia, Michigan, New Jersey and Pennsylvania.

that a driver's license is a privilege bestowed by the state and subject, therefore, to whatever reasonable regulations the state chooses to impose thereon. In *Moorehead v. Mississippi Safety-Responsibility Bureau*, 232 Miss. 422, 99 So. 450 (1958), there is a collection of the cases so holding. The opinion cites first the case of *Texas Department of Public Safety v. Jackson*, 272 S. W. 2d 577, 579, which says:

> " 'The grant of a driver's license to operate a motor vehicle has been held in this State, as in others, to be a privilege, and not a right. Department of Public Safety v. Gillespie, supra [Tex. Civ. App., 254 S.W. 2d 177]. As a privilege, it may be conditioned in such manner as the Legislature sees fit.' "

Following this citation are quotes from a number of other cases from neighboring state jurisdictions with the final reference benig to the New York case of *Ohlson v. Mealey*, 179 Misc. 13, 37 N.Y.S. 2d 123, 126. The language cited reads:

> " 'It must be borne in mind that licensees of motor vehicles take their licenses and accept the privileges thereof subject to such conditions as the Legislature sees fit to impose. [Cases cited.] The reasonableness and necessity of regulation of the character provided for in the statute under consideration has long been recognized.' "

Following the Ohlson case, in which the privilege theory was adopted, New York has since ruled that a license to drive is a property right. However, the New York courts continue to maintain that the state retains control and regulation powers over this right, as is demonstrated in the case of *Grosso v. Hults*, 193 N.Y.S. 2d 544, 546 (1959), as follows:

> "Although the possession of a license to drive is a vested property right (Moore v. Macduff, 309

N.Y. 35, 127 N.E. 2d 741) and may not be taken away except by due process (Wignall v. Fletcher, 303 N.Y. 435, 103 N.E. 2d 728), the Legislature in exercising its power reasonably to regulate the use of highways may impose reasonable conditions before a licensee is issued and for continued possession of the same. In *Reits v. Mealey*, 314 U.S. 33, at page 36, 62 S. Ct. 24, at page 26, 86 L. Ed. 21, the Supreme Court said:

" 'The use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice is to register ownership of automobiles and to license their drivers. *Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highways is consonant with due process.*' " (Emphasis added.)

Thus, it appears that whether a driver's license is thought of as a property right or a privilege, the state's inherent right reasonably to regulate the issuance and suspension of the same has been universally upheld.

In the case of *DeVries v. Alger, Secretary of State*, 329 Mich. 68, 44 N.W. 2d 872 (1950), a provision similar to Section 41-12-15, Utah Code Annotated 1953, cited above, was contested. This is the provision which provides that a discharge in bankruptcy shall not affect the operation of the act. In *DeVries*, the bankrupt claimed the Michigan and the United States Constitutions had been violated because of the inconsistency of that provision with Section 17 of the Bankruptcy Act. The bankrupt insisted further that the judgment on which the license had been revoked was barred by the statute of limitations. The court cited the *Reits* opinion noted above and continued at 876 of 44 N.W. 2d:

"Reasonable minds agree that the legislature has the right under its police powers to control auto-

mobile traffic. One of the purposes of the act in question is the regulation of such traffic by the control of those who may be licensed to drive a motor vehicle. In our opinion the act in question is not unconstitutional.

"It is also urged that the defendant in his construction of the statute attempts to make the office of the Secretary of State an agency to enforce payment of a debt. The running of the statute of limitations does not cancel the debt, it merely prevents a creditor from enforcing his claim.

* * *

"It clearly appears to have been the policy of the legislature that a discharge of a debt by bankruptcy does not relieve the debtor from the requirements of the act. Likewise, in our opinion, the statute of limitations should not relieve a debtor from the requirements of the act. In each case the moral obligation to pay a just debt remains, but the power to enforce payment is stayed by operation of law."

The Michigan statute construed in the *DeVries* case was as follows:

"A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this chapter."

This statute is identical to Section 41-12-15, Utah Code Annotated 1953, with the exception that the word "chapter" at the end of the sentence appears as "act" in the Utah statute. This case clearly upholds that provision of the statute as constitutional.

With regard to Section 41-12-13, since the comparable section of the New York Act reviewed in the *Reitz* case, supra, was an amendment which the majority opinion refused to construe, appellant has urged in his brief that this court should therefore adopt the view of the dissenting opin-

ion in that case because it concerns itself primarily with the amendment. This same argument was pressed below by appellant and the court ruled:

> "We are not unmindful that four of the Justices of the Supreme Court as then constituted held a contrary view, and that comments in the prevailing opinion indicated that there might be some merit in the argument now made by the petitioner.
>
> "But the very basis of the prevailing opinion—that of abstention from deciding the point—commends that we refrain from reading anything into the decision inconsistent with the proposition that the lower court and the Supreme Court did not decide the point directly or indirectly.
>
> "We must accept the proposition which was directly decided in Reitz, that a system involving the mandatory forwarding by the clerk of unsatisfied judgments for action by the commission against the operating privileges of the judgment debtor is sustainable. On the latter point the Supreme Court said:
>
> " 'Second. Prior to the amendment of 1936, the license could not be restored until three years had expired from its suspension unless the judgment were paid or discharged, except by a discharge in bankruptcy, and unless, also, the licensee furnished proof of his ability to respond in damages for any future accident.
>
> " 'If the statute went no further, we are clear that it would constitute a valid exercise of the state's police power not inconsistent with § 17 of the bankruptcy act. The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary

bankruptcy, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety.' [P. 37 of 314 U.S.]

"Hence, the Utah statute (insofar as we are required to pass upon it) would be valid, aside from its provision that copies of unexecuted judgments, necessary as foundations for action by the commission, must be forwarded at the request of the judgment creditor. Does this point render the act invalid? It seems a somewhat frail one upon which to rest a finding of unconstitutionality, although entirely sufficient if it be established that its basis and justification are the coercion of bankrupts into the payment of discharged debts.

"Despite proper distrust of the police power as an instrument or occasion for private action, examples may be cited of the necessity and effectiveness of action by injured parties in setting in motion a system for the public's protection. Parties as to whom or against whose interest criminal offenses, punishable under the police power, have been committed, may make complaints before committing magistrates. Unless they do so, ordinarily criminal prosecution, expecially with respect to certain types of offenses, may not be set in motion. The requirement of a criminal complaint is largely for the protection of the defendant. The same can be said of the requirement in the act in question that the creditor initiate the process of suspension.

"If the forwarding of judgments, remaining unsatisfied for some period, were mandatorily required of clerks, numerous licenses likely would be revoked even though the judgments had in fact been satisfied or the debtors had made at least some informal arrangement or settlement with the creditor. As a practical matter, the view reasonably could be entertained that the forwarding of copies of unsatisfied

> judgments at the request of judgment creditors would be a procedure best designed to protect both the public and the licensees within the legitimate objectives of the police power. There might be differences of opinion as to the means best calculated to carry out the legitimate purposes of the act with due regard to the rights and convenience of the parties involved. It is not the problem of the court to resolve these reasonable differences. Certainly it cannot be said that such a provision as is here in question necessarily conflicts with the bankruptcy act, if the mandatory forwarding of judgments for action would not do so. . .'' (R. 20-23)

The reasoning of the court below commends itself to this tribunal, and the appellee urges that this court adopt the same.

(b) Presumption and standards of constitutionality.

In the case of *Bibb v. Navajo Freight Lines,* 359 U.S. 520, a portion of the Illinois Motor Vehicle Code, requiring certain safety devices to be attached to truck wheels, was claimed unconstitutional on the ground that it conflicted with the commerce clause. This court therein said, at page 524:

> "These safety measures carry a strong presumption of validity when challenged in court. If there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective. Policy decisions are for the state legislature, absent federal entry into the field. Unless we can conclude on the whole record that 'the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it' South-

ern P. Co. v Arizona, supra [325 U.S. 775, 776], we must uphold the statute."

Appellee maintains that the act in question is in fact a "safety measure" within the meaning of the language of that case. That is, the statute concerns itself primarily with highway safety and the preventing of financially irresponsible people from using the state's roads. The statute is, therefore, entitled to the same presumption of validity and is subject to the same standards. As noted above, Financial Responsibility Acts have been repeatedly upheld as accomplishing a legitimate, legislative purpose and objective properly within the respective states' police power. Appellee respectfully submits that this court should find that the state policy of preventing financially irresponsible drivers from using its highways outweighs whatever intrusion the act may incidentally make into the field of bankruptcy.

(c) Creditor benefits are incidental.

The Utah act, by its own terms, read as a whole, is predominantly a police statute and is not preoccupied with the collection of otherwise discharged debts. Specifically, the provisions of Section 41-12-14(b) (R. 6) (which section, as noted above, is not attacked as unconstitutional because it was not invoked below) provide that a revoked license may be returned to the judgment debtor with the consent of the judgment creditor. This section, however, adds the additional qualification that the judgment debtor also furnish "proof of financial responsibility" and, incidentally, provides that the creditor's written consent must be in "such form as the commission may prescribe." These provisions indicate that the creditor does not have exclusive

control over the return of a debtor's license, but that rather the commission, even after the consent of the creditor, must be satisfied that the debtor as demonstrated his ability to "respond in damages" for liability in the amounts prescribed.[3]

The Utah act further provides, at Section 41-12-16, Utah Code Annotated 1953, as follows:

> "Judgments in excess of the amounts, specified in section 41-12-1, subsection (k) shall, for the purpose of this act only, be deemed satisfied when payments in the amounts so specified have been credited thereon; provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified."

This provision means that should the judgment debtor make payment up to $5,000 in the case of one person for bodily injury or death, $10,000 for more than one person, and $1,000 total property damage, and upon furnishing "proof of financial responsibility" thereafter, the driving privileges may be returned. It further requires that the commission credit towards these totals all payments whether they be applied to what is known as "general" damages or "special" damages. The act, therefore, is not designed to collect the full amount of all judgments obtained against negligent drivers, but only up to the standard of financial responsibility required by the statute.

Section 41-12-17 (R. 7) permits the judgment debtor to apply to the court wherein the judgment was entered to make payment in monthly installments and gives the exclusive discretion over the size and regularity thereof to

[3] 41-12-1(k), U.C.A. 1953. (R. 5)

the court. It further provides that upon the court's entering such an insallment order, and a showing by the judgment debtur of "proof of financial responsibility," the license will be returned. The creditor here is given no control over how much or in what fashion the court orders the judgment debtor to amortize the debt. Presumably, the creditor could be heard by the court at the time of the determination, but the discretion is exclusively the court's.

Section 41-12-13, requiring the creditor to take the affirmative action in order to bring about revocation, in reality, gives the debtor an escape hatch he would not have in the automatic revocation statute, such as the New York act upheld in the Reitz case. As the lower court noted in its opinion, already quoted above:

> "If the forwarding of judgments, remaining unsatisfied for some period, were mandatorily required of clerks, numerous licenses likely would be revoked even though the judgments had in fact been satisfied or the debtors had made at least some informal arrangement or settlement with the creditor. *As a practical matter, the view reasonable could be entertained that the forwarding of copies of unsatisfied judgments at the request of judgment creditors would be a procedure best designed to protect both the public and the licensees within the legitimate objectives of the police power.* There might be differences of opinion as to the means best calculated to carry out the legitimate purposes of the act with due regard to the rights and convenience of the parties involved. It is not the problem of the court to resolve these reasonable differences. *Certainly it cannot be said that such a provision as is here in question necessarily conflicts with the bankruptcy act, if the mandatory forwarding of judgments for action would not do so.* The power to d e c l a r e legislative enactments unconstitutional should be exercised with extreme caution. The court cannot assume that state legislative enactments are

> adopted arbitrarily or without good reason to further some legitimate policy of the state. Highway regulations enacted by a state carry a strong presumption of validity when challenged in court." (Emphasis added)
>
> (R. 22-23.)

In a footnote at page 22 in the Record, the lower court commented on another section of the act as follows:

> "Another provision of the law not now under attack (41-12-5* Utah Code Annotated, 1953) provides that as to the more serious automobile accidents, prior to the entry of any judgment, but upon the basis of a statutory accident report, unless there is evidence that the operators involved have been released from liability, their operating privileges are to be suspended until they furnish specified security, but only if an injured party has submitted evidence of his damages to the commission. The incorporated creditor control also seems primarily for the benefit of the prospective debtor and points up the hardship that might unnecessarily result to him if the suspension were automatic."

All of the above noted provisions demonstrate that the Legislature's primary concern in enacting the law was with the subject of financial responsibility of drivers on the state's highways. It's secondary concern would seem to be protection of the rights of negligent drivers who become thereby judgment debtors. At least the sections noted above redound principally to their benefit.

Summarized, these sections provide that, following a judgment arising from negligent operation of a motor vehicle, the judgment debtor may privately prevail on the judgment creditor to remain silent and thus leave the debtor's license in force. Private settlement of the judgment to the creditor's satisfaction may also result in the

---

* The printed record shows the statutory reference to be 41-12-15, and is apparently a misprint, since the section to which the court referred is the one cited above.

creditor's silence and the retention by the debtor of his license. Should the judgment exceed $11,000, if there be more than one judgment creditor suffering both personal and property damage, or should the judgment exceed $6,000 where only one judgment creditor with property damage exists, the debtor may redeem his license by arranging to pay those applicable sums on terms acceptable to the court (and *not* necessarily the judgment creditor) upon an additional showing of "proof of financial responsibility." Finally, following judgment and revocation, the debtor may obtain a return of his license upon a written consent from the creditor, together with a showing of "proof of financial responsibility."

Appellee contends that since this court has upheld an automatic revocation statute, where none of these safeguards and debtor options exist, this statute should be upheld, since it is in effect a more lenient law, and the incidental benefits to the creditor are not so repugnant as to make it unconstitutional.

In considering these benefits to judgment creditors, specifically the creditor-initiating provision (41-12-13), the court below observed its similarity to the complaining-witness situation in criminal prosecutions. The opinion reads:

> "• • • Parties as to whom or against whose interest criminal offenses, punishable under the police power, have been committed, may make complaints before committing magistrates. Unless they do so, ordinarily criminal prosecution, especially with respect to certain types of offenses, may not be set in motion. The requirement of a criminal complaint is largely for the protection of the defendant. The same can be said of the requirements in the act in question that the creditor initiate the process of suspension." (R. 22.)

A logical extension can be made to the argument. In a given criminal prosecution initiated by a complaining witness following a conviction, it is possible that the trial judge exercising his discretion may place a convicted defendant on probation and order that he make full restitution to the injured complaining witness, thereby directly benefiting the party who initiated the action. It could hardly be said, however, that because restitution is possible and personal benefit thus be received, that the basic nature of the criminal statute is thereby changed from a police regulation to private legislation for the benefit of individuals. Appellee submits that the same argument is equally valid with regard to the incidental creditor benefits bestowed by the act here in issue.

(d) To permit appellant the relief sought would frustrate the purpose of the act through the simple expediency of voluntary bankruptcy.

In support of this contention, the language of the majority opinion in the Reitz case is self-explanatory:

> "• • • The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. *The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary bankruptcy*, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety."[4] (Emphasis added.)

[4] P. 37 of 314 U.S.

As was observed in the statement at the beginning of this brief, appellant in his bankruptcy scheduled only the judgments giving rise to his license revocation, his attorney's fees incurred in the defense of the negligence action, and one bill of a finance company in the amount of $502.25. It appears, therefore, in the instant fact situation that appellant was not seeking a discharge in bankruptcy to free himself from the onerous burden of excessive debt. Rather, it appears a transparent effort to circumvent the state's Financial Responsibility Act by the "expedient of voluntary bankruptcy."

CONCLUSION

For foregoing reasons, it is respectfully submitted that the decision of the court below should be affirmed.

Respectfully submitted,

WALTER L. BUDGE
Attorney General
GORDON A. MADSEN
Assistant Attorney General
Attorneys for Appellee
State Capitol
Salt Lake City, Utah